No. 16-1275

IN THE
Supreme Court of the United States

VIRGINIA URANIUM, INC., ET AL.,
Petitioners,

v.

JOHN WARREN, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF PREEMPTION LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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September 4, 2018

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a), counsel for *amici* also represent that all parties have consented to the filing of this brief.

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INTRODUCTION

Legislative-motive inquiries have no place in this Court's Supremacy Clause jurisprudence. The Court does not embark on that fraught enterprise in any other area of preemption doctrine. And for good reason: a motive-based standard raises intractable conceptual and practical problems, and entails significant incursion into state sovereignty. Neither the Atomic Energy Act of 1954 nor this Court's decisions interpreting it require this Court to depart from its well-worn path. The Court should affirm.

SUMMARY OF ARGUMENT

Preemption in this case should not turn on the subjective motivations of the state officials who enacted Virginia's ban on uranium mining. In no area of preemption doctrine does the result turn on the purpose of the state law rather than its effects. Likewise, in the converse scenario, this Court has explicitly held that a benign state purpose (i.e., a purpose not to obstruct federal law) cannot save a state statute that has the effect of being an obstacle to Congress's goals. Petitioners' proposed test would thus create an aberration in preemption doctrine—a unique exception for the field of nuclear safety.

Legislative-motive inquiries are also anomalous in constitutional doctrine beyond preemption. Before the 1970s, this Court almost never considered legislative purpose. Since then, it has done so only in narrow areas like equal protection and the Establishment Clause. Even in those areas, an illicit motive generally cannot, standing alone, make a law unconstitutional. Petitioners' position not only departs from longstanding preemption doctrine but adopts a mode of analysis that is highly disfavored in modern constitutional law generally.

The Court's reluctance to inquire into legislative motive is well justified. As this Court recently explained, such inquiries raise intractable conceptual and practical problems. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 404 (2010). In the preemption context, such an inquiry also poses a serious threat to federalism. This Court should therefore reject petitioners' legal standard and affirm.

ARGUMENT

Of the three types of preemption this Court has identified—express, field, and conflict preemption—only field and conflict preemption are at issue in this case, and this brief addresses petitioners' arguments regarding the former. The question in field preemption cases is whether Congress "intended to foreclose any state regulation in the *area*, irrespective of whether state law is consistent or inconsistent with federal standards." *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015). As "[i]n all pre-emption cases," field-preemption analysis begins "with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (alteration in original).

I. A Legislative-Motive Inquiry Here Would Be Unique In Preemption Doctrine And An Outlier In Constitutional Doctrine Generally

A. This Court Has Consistently Held That States' Intent Is Irrelevant to Preemption

1. This Court has long held that a state law is preempted only when it regulates in a field properly subject to federal regulation. The touchstone is what the State actually did, not why it did it.[2] The Court's decision in *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393 (2010), is illustrative. There, it did not matter what the state legislature might have intended to do or "[t]he manner

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[2] State legislative intent is equally irrelevant in conflict preemption, of which "field pre-emption may be understood as a species," *English v. General Elec. Co.*, 496 U.S. 72, 79 n.5 (1990), but petitioners do not invoke legislative intent in their conflict-preemption arguments here.

in which the law could have been written . . . ; what matter[ed] [wa]s the law the legislature *did* enact." *Id.* at 403.

Shady Grove went on to explain some of the fundamental problems that would arise from a legislative-motive-based approach to preemption. For one thing, it would produce arbitrary outcomes: "[O]ne State's statute could survive pre-emption . . . while another State's identical law would not, merely because its authors had different aspirations." *Id.* at 404. For another, it would be unfriendly to state prerogatives to look into motive rather than simply "accept[ing] the [state] law as written and test[ing] the validity of the Federal [law]." *Id.* For yet another, it would raise tremendous practical problems for courts. "Many laws further more than one aim, and the aim of others may be impossible to discern." *Id.* Trial courts would nonetheless have to attempt "to discern, in every [relevant] case, the purpose behind any putatively pre-empted state . . . rule." *Id.* That "task w[ould] often prove arduous"; "[h]ard cases" would "abound"; and "federal judges would be condemned to poring through state legislative history—which may be less easily obtained, less thorough, and less familiar than its federal counterpart." *Id.* at 404-05.

2. *Shady Grove* is just one in a long list of cases, covering a wide range of federal statutes, all with the same punchline: Not even the objective purpose of a state law, to say nothing of its legislators' subjective motivations, is relevant in preemption analysis. No area of modern preemption doctrine works otherwise—not immigration, *Arizona v. United States*, 567 U.S. 387 (2012); not arbitration, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); not foreign affairs, *Crosby v. National Foreign Trade Council*, 530 U.S.

363 (2000); not railroads, *Kurns v. Railroad Friction Prods. Corp.*, 565 U.S. 625 (2012); and not energy rates, *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288 (2016), to list just a few.

Indeed, almost 50 years ago, this Court expressly overruled an earlier approach to preemption that turned on the purpose of state law. In *Kesler v. Department of Public Safety*, 369 U.S. 153 (1962), and *Reitz v. Mealey*, 314 U.S. 33 (1941), the Court had upheld state laws that—by leaving debts arising from car accidents in place regardless of bankruptcy—interfered with the goal of federal bankruptcy law to give debtors a clean slate. The Court in those two cases reasoned that the state laws were not preempted because their purposes were to promote road safety, rather than to provide relief to creditors. *See Kesler*, 369 U.S. at 174; *Reitz*, 314 U.S. at 37

That approach ended in *Perez v. Campbell*, 402 U.S. 637 (1971), in which the Court held that it would "no longer adhere to the aberrational doctrine of *Kesler* and *Reitz* that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration." *Id.* at 651-52. The purpose-driven approach of *Kesler* and *Reitz*, *Perez* explained, was aberrant because it removed the focus from the effects of the state law at issue, which ran contrary to preemption doctrine as far back as Chief Justice Marshall's opinion in *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824). *See* 402 U.S. at 649-50 (also citing *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Sola Elec. Co. v. Jefferson Elec. Co.*, 317 U.S. 173, 176 (1942); *Hill v. Florida ex rel. Watson*, 325 U.S. 538, 542-43 (1945); *Free v. Bland*, 369 U.S. 663, 666 (1962); *Colorado Anti-Discrimination Comm'n v. Continental*

Air Lines, Inc., 372 U.S. 714, 722 (1963); *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 229 (1964); *Nash v. Florida Indus. Comm'n*, 389 U.S. 235, 240 (1967)); *see also Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 141-42 (1963) (focusing on "whether the purposes of the two laws are parallel or divergent" tends to "obscure more than aid" in determining whether state law is preempted by federal law) (emphasis omitted); *Napier v. Atlantic Coast Line R.R. Co.*, 272 U.S. 605, 612 (1926) (preemption analysis turns not on whether federal and state laws "are aimed at distinct and different evils" but on whether they "operate upon the same object"). The Court thus "conclude[d] that *Kesler* and *Reitz* can have no authoritative effect to the extent they are inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause." *Perez*, 402 U.S. at 652.

In the years since *Perez*, this Court has held the same line, time and again, as litigants try to save state statutes from preemption by pointing to benign legislative purposes. The Court explained in *Hughes v. Oklahoma*, 441 U.S. 322 (1979), that, "when considering the purpose of a challenged statute, this Court is not bound by '[t]he name, description or characterization given it by the legislature or the courts of the State,' but will determine for itself *the practical impact* of the law." *Id.* at 336 (quoting *Lacoste v. Department of Conservation of Louisiana*, 263 U.S. 545, 550 (1924)) (emphasis added; alteration in original). *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), held that, "[w]hatever the purpose or purposes of the New Jersey statute, we conclude that it 'relate[s] to pension plans' governed by [the Employee

Retirement Income Security Act of 1974 ('ERISA')]." *Id.* at 524 (second alteration in original). The Court in *International Paper Co. v. Ouellette*, 479 U.S. 481 (1987), noted that *Perez* stands for the proposition that "effect rather than purpose of a state statute governs pre-emption analysis." *Id.* at 498 n.19. In *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988), the Court again reiterated the core idea of *Perez*: "Legislative 'good intentions' do not save a state law within the broad pre-emptive scope of [ERISA] § 514(a)." *Id.* at 830. In *Gade v. National Solid Wastes Management Ass'n*, 505 U.S. 88 (1992), the Court similarly held that, "[w]hatever the purpose or purposes of the state law, pre-emption analysis cannot ignore the effect of the challenged state action on the pre-empted field. The key question is thus at what point the state regulation sufficiently interferes with federal regulation that it should be deemed pre-empted." *Id.* at 107. And in *Gobeille v. Liberty Mutual Insurance Co.*, 136 S. Ct. 936 (2016), the Court featured the now-familiar refrain that "[a]ny difference in purpose does not transform this direct regulation of a central matter of [ERISA] plan administration into an innocuous and peripheral set of additional rules." *Id.* at 946 (citation omitted). State purpose and motive simply have no role in preemption analysis.

B. Judicial Scrutiny of Legislative Motive Is Disfavored in Constitutional Law Generally

In constitutional doctrine more generally, inquiries into legislative intent (particularly subjective motive) are also rare and increasingly disfavored.

In the nineteenth century, this Court "frequently rebuffed calls for judicial scrutiny of legislative motivation." Richard H. Fallon, Jr., *Constitutionally Forbidden Legislative Intent*, 130 Harv. L. Rev. 523,

534 (2016). That trend began early in our constitutional history. In *Fletcher v. Peck*, 10 U.S. (6 Cranch) 87 (1810), Chief Justice Marshall held that a court of law "cannot sustain a suit . . . founded on the allegation that the act is a nullity, in consequence of the impure motives which influenced certain members of the legislature which passed the law." *Id.* at 131.

For most of the twentieth century, legislative-intent inquiries remained both rare and restricted in scope.[3] The 1970s marked a shift in the Court's willingness to probe legislative intent. *See* Michael J. Klarman, *An Interpretive History of Modern Equal Protection*, 90 Mich. L. Rev. 213, 284-85 (1991). The inquiry became relevant in a limited number of contexts, including the Equal Protection Clause, the dormant Commerce Clause, the Establishment Clause, and the Free Exercise Clause. *See* Fallon, 130 Harv. L. Rev. at 525-26. Yet even in these areas the decisional significance of legislative intent remained quite limited. Impermissible legislative intent is, alone, sufficient to strike down a law in only a few cases.[4]

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[3] *See Tenney v. Brandhove*, 341 U.S. 367, 377 (1951) ("The holding of this Court in Fletcher v. Peck, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned.") (citation omitted); *United States v. O'Brien*, 391 U.S. 367, 383 (1968) ("It is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive."); *Palmer v. Thompson*, 403 U.S. 217, 224 (1971) ("[N]o case in this Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it.").

[4] *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and its progeny would overturn laws solely because their purpose was to promote religion. *See*, *e.g.*, *McCreary Cty. v. ACLU of Kentucky*, 545 U.S. 844, 860 (2005). Many Justices have questioned the continuing validity of the *Lemon* test. *See Lamb's Chapel v. Center Moriches*

What is more, the nature of inquiries into legislative purpose, motive, and intent has changed even since the 1970s. Although the Court used to consider the subjective psychological motives of state officials,[5] more recent cases aim the legislative-intent inquiry at something like "objective purpose." *See id.* at 541-43. This version of legislative intent may be discerned in a manner akin to ordinary statutory interpretation, including inferring purpose from the distinctive effects of a law. *See*, *e.g.*, *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (striking a peculiarly shaped legislative district that was "so extremely irregular on its face that it rationally c[ould] be viewed only as an effort to segregate the races for purposes of voting").

II. Preemption Should Not Turn On Subjective Legislative Intent

Petitioners' position—that preemption under the Atomic Energy Act depends on subjective inquiry into state legislative motive—would raise numerous conceptual and practical problems. It would also implicate serious federalism concerns.

Union Free Sch. Dist., 508 U.S. 384, 398 (1993) (Scalia, J., concurring in the judgment) (explaining that six of the Justices serving in 1993 had criticized *Lemon* or joined opinions doing so).

[5] *See*, *e.g.*, *Wallace v. Jaffree*, 472 U.S. 38, 56-57 (1985) (relying on legislative history to support a finding that the legislature acted with a constitutionally forbidden purpose of promoting prayer in public schools); *Personnel Adm'r v. Feeney*, 442 U.S. 256, 279 (1979) (stating that a "'[d]iscriminatory purpose' . . . implies that [a legislature] . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group"); *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540-41 (1993) (plurality opinion); *see also* Fallon, 130 Harv. L. Rev. at 537.

A. Legislative-Intent Inquiries Raise Serious Conceptual Problems

As this Court has recognized, it is doubtful whether the idea of *collective* intent—of the group of legislators and executive-branch officials who enacted the state legislation—is even intellectually coherent. As this Court stated, "[w]hat motivates one legislator to vote for a statute is not necessarily what motivates scores of others to enact it." *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 216 (1983) (citing *O'Brien*, 391 U.S. at 383-84); *see* 2 Joseph Story, *Commentaries on the Constitution of the United States* 533 (Boston, Hilliard, Gray & Co. 1833) (mindsets of individual legislators might be "opposite to, or wholly independent of each other"). There is no reason to expect consistency in the disparate motives of different legislators for laws that may themselves "further more than one aim." *Shady Grove*, 559 U.S. at 404. Thus, as Justice Scalia wrote, looking for the purpose of a multimember body is likely "impossible." *Edwards v. Aguillard*, 482 U.S. 578, 636 (1987) (Scalia, J., dissenting); *see also* Kenneth A. Shepsle, *Congress Is a "They," Not an "It": Legislative Intent as Oxymoron*, 12 Int'l Rev. L. & Econ. 239, 249 (1992) (it is "fruitless to attribute intent to the product of [legislators'] collective efforts"); Robert C. Farrell, *Legislative Purpose and Equal Protection's Rationality Review*, 37 Vill. L. Rev. 1, 11 (1992) ("If legislative purpose is the mere aggregation of the motivations of individual legislators, then there seems no escaping the conclusion that the very idea of legislative purpose is incoherent."); John F. Manning, *Textualism and Legislative Intent*, 91 Va. L. Rev. 419, 427-32 (2005); Caleb Nelson, *What Is Textualism?*,

91 Va. L. Rev. 347, 353-57 (2005); Ronald Dworkin, *Law's Empire* 321-33 (1986).

Even if collective intent were a coherent idea, to go looking for it outside the well-marked boundaries of statutory interpretation would raise a slew of other difficult conceptual problems. *See* Fallon, 130 Harv. L. Rev. at 537-41. What legal rules determine how and when to ascribe an intention to a particular legislator? What if a forbidden intention existed but was not necessary to a legislator's vote? What percentage of legislators need to share a forbidden intention for a law to be tainted? What if the illicit intentions of some legislators (or lobbyists) drove them to persuade others to vote for a bill on permissible grounds—is that a sufficient causal link to bad intent? And, for all of these questions, what source of authority guides courts' answers?

B. Legislative-Intent Inquiries Raise Serious Practical Problems

The practical difficulties with discerning collective intent are just as large and no less crippling to the concrete judicial enterprise of deciding cases.

1. *A motive-based inquiry would produce arbitrary outcomes*. It is clear, as the Federal Government acknowledges, that "States retain the authority to regulate conventional uranium mining—or to prohibit it altogether." U.S. Cert. Br. 16, 18. Thus, under petitioners' rule, *Shady Grove*'s premonition would come to pass, in which "one State's statute could survive pre-emption . . . while another State's identical law would not, merely because its authors had different aspirations." 559 U.S. at 404; *see also Pacific Gas*, 461 U.S. at 216 ("it would be particularly pointless for us to engage in such inquiry here when it is clear that the states have been allowed to retain authority . . . to

halt the construction of new nuclear plants"); *O'Brien*, 391 U.S. at 384 ("We decline to void . . . legislation which Congress had the undoubted power to enact and which could be reenacted in its exact form if the same or another legislator made a 'wiser' speech about it.").

To illustrate: If a state law subsidized coal or wind power, it would be preempted under petitioners' view of the Atomic Energy Act if the legislators were motivated in part by a belief that increased use of those power sources would reduce demand for—and the radiological hazard from—nuclear energy. Another State's identical subsidy would survive if the benefit of reducing hazards from nuclear power never entered the discussion. Whatever Congress intended to preempt in the Atomic Energy Act, it cannot have meant to do that.

2. *Collective motive is extraordinarily difficult for courts to discern.* Even putting aside the conceptual difficulties surrounding *collective* intent, inquiry into the subjective motives of even a single state official is usually "an unsatisfactory venture." *Pacific Gas*, 461 U.S. at 216. How will courts decide with any confidence what state lawmakers were thinking when they enacted the statute in this case *35 years ago*? What is the relevance, if any, of unsuccessful efforts to repeal that law that did not even come to a vote? Does the intent of those subsequent legislators count? What about the concerns of staffers, lobbyists, concerned citizens, and other interest groups? What significance should courts attach to legislators' public statements to the media or newspaper articles on the "realities of the legislative bargaining?" *Edwards*, 482 U.S. at 638 (Scalia, J., dissenting). Petitioners here rely on both. What about legislators' *private* statements to friends? Will the court consider "postenactment testimony from legislators, obtained expressly for the lawsuit?"

Id. "All of these sources, of course, are eminently manipulable. Legislative histories can be contrived and sanitized, favorable media coverage orchestrated, and postenactment recollections conveniently distorted." *Id.*

And if discerning federal legislative history were not difficult enough, adoption of petitioners' position would require federal judges "to por[e] through state legislative history—which may be less easily obtained, less thorough, and less familiar than its federal counterpart." *Shady Grove*, 559 U.S. at 405 (citing Roy M. Mersky & Donald J. Dunn, *Fundamentals of Legal Research* 233 (8th ed. 2002); Jose R. Torres & Steve Windsor, *State Legislative Histories: A Select, Annotated Bibliography*, 85 L. Lib. J. 545, 547 (1993)). All of these questions—or, rather, the fact that "there are no good answers," *Edwards*, 482 U.S. at 638 (Scalia, J., dissenting)—explain why the Court has generally avoided legislative-motive inquiries, and why it should do so here.[6]

C. Legislative-Intent Inquiries Raise Serious Federalism Problems

Turning preemption on legislative motive would also trample important state sovereignty interests.

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[6] For these reasons, scholars have argued that an improper motive should never, standing alone, invalidate a state law. *See* Laurence H. Tribe, *The Mystery of Motive, Private and Public: Some Notes Inspired by the Problems of Hate Crime and Animal Sacrifice*, 1993 Sup. Ct. Rev. 1, 23 (arguing that illicit legislative motive should never be sufficient to invalidate laws regulating conduct); Richard L. Hasen, *Bad Legislative Intent*, 2006 Wis. L. Rev. 843, 846 (proof of bad intent "should be neither necessary nor sufficient for an election law challenge to succeed"); Fallon, 130 Harv. L. Rev. at 529 ("[C]ourts should never invalidate legislation *solely* because of the subjective intentions of those who enacted it.").

"In preemption analysis," courts assume "that the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress." *Arizona*, 567 U.S. at 400. An inquiry into legislative motive would harm the very state sovereignty interests that the presumption against preemption aims to protect.

A preemption inquiry into state motives "is perilous . . . not just for the judges who will very likely reach the wrong result, but also for the legislators who find that they must assess the validity of proposed legislation—and risk the condemnation of having voted for an unconstitutional measure—not on the basis of what the legislation contains, nor even on the basis of what they themselves intend, but on the basis of what *others* have in mind." *Edwards*, 482 U.S. at 638-39 (Scalia, J., dissenting). It would also create tremendous uncertainty about the power left to the States. (For this reason, *Shady Grove* stated that, rather than reshaping text to a federal court's conception of purpose, "the state-friendly approach [is] to accept the law *as written*." 559 U.S. at 404 (emphasis added).) Some questions that might daunt state legislators here: How much concern for radiological hazards is too much? Who has to express that concern, and in what contexts? If everyone who voted for a law had an independent, sufficient reason to pass it, has the State acted within the federal sphere or not? And is there any way to control whether a law runs into the federal field, when one legislator with permissible motives cannot control the motives or intentions of other legislators, commentators, or officials?

The natural result of such judicial inquiries will be to stifle debate. Democracy benefits from debate on public issues that is "uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254,

270 (1964). For that reason, and in accordance with the longstanding principle of legislative immunity, both the federal and numerous state constitutions (including Virginia's) have Speech and Debate Clauses to preclude judicial "question[ing]" of legislators for statements made or votes cast in legislative session. *See* U.S. Const. art. I, § 6, cl. 1; Va. Const. art. IV, § 9. A central purpose of such clauses is "to protect legislative independence." *United States v. Gillock*, 445 U.S. 360, 369 (1980); *accord Edwards v. Vesilind*, 790 S.E.2d 469, 476 (Va. 2016) (citing 4 William Holdsworth, *A History of English Law* 91 n.6 (1924)). But a motive-driven preemption rule would constrain state legislators in their deliberations. They would have the incentive to minimize public debate and to resort to secrecy and subterfuge, rather than risk stepping into federal territory by offering even tentative federal-field-related justifications for a proposed law.

Under the Atomic Energy Act specifically, the States would be highly constrained in regulating even those nuclear power-adjacent areas that Congress left to their judgment. It is extremely difficult to separate permissible motives—like environmental and economic concerns—from radiological safety issues. *See Entergy Nuclear Vermont Yankee, LLC v. Shumlin*, 733 F.3d 393, 437 (2d Cir. 2013) (Carney, J., concurring) ("[I]it seems impossible to divorce safety concerns from any State legislature's consideration of whether to allow, or continue to allow, the generation of nuclear power within its borders."). The infringement on deliberative freedom about even these traditional areas of state regulation intrudes upon core state prerogatives.

Then there are the severe practical burdens of responding to the judicial inquiry. In petitioners' vision, federal courts would have to charge forth,

ordering depositions of state legislators so that attorneys may perform the exact "questioning" that Speech and Debate Clauses preclude. Any responsible method of aggregating individual motives into a collective legislative intention would have to involve testimony from at least a substantial number of the legislators who voted for the law in question; it would need testimony from the governor who signed the law; perhaps it would need testimony from those who voted against the law, and from staffers, lobbyists, and commentators to provide context and give their own perceptions of what legislators' real motives were. Then, once all of those depositions are finished, if there is no picture clear enough for summary judgment, the same lawmakers would be haled into court to testify at trial—and be subject to cross-examination—about their subjective psychological motivations. One can imagine few more intrusive ways for federal courts to burden the daily operations of sovereign States.

And, it bears repeating, the entire invasive inquiry may well be for naught. After reviewing all of that testimony, documents from the time, lawmakers' public and private statements, and the views of commentators, staffers, and lobbyists, the court may *still* be unable to discern *any* unified motive behind the law, never mind a forbidden one. There is no reason to burden state sovereignty in this way when legislative motive is irrelevant to the Supremacy Clause analysis that suffices in every other area, when the inquiry is extremely unlikely to be enlightening, and—last but not least—when Congress still retains ample authority "to rethink the division of regulatory authority in light of its possible exercise by the States to undercut a federal objective." *Pacific Gas*, 461 U.S. at 223.

III. Neither The Atomic Energy Act Nor This Court's Cases Require A Motive Inquiry

Against all of that background about the peculiarity of, and the problems raised by, legislative-motive inquiries, neither the Atomic Energy Act nor this Court's cases applying it provide a reason to embark on one. As the Commonwealth's brief persuasively explains, 42 U.S.C. § 2021(k) does not preempt anything; § 2021 generally does not define the preempted field by reference to the purposes of state laws; and *Pacific Gas* and its progeny feature, at most, an effects-based preemption test along with dicta about state purposes and rationales. *See* Resp. Br. 21-33.

But even if the Court were to conclude otherwise, the phrase "for purposes other than protection against radiation hazards" in § 2021(k) should not be interpreted as requiring an inquiry into the *subjective* motivations of state legislators. Rather, "purposes" refers to the objective legislative purposes of the statute—an inquiry that courts are far better equipped to address than the fact-intensive motive inquiry petitioners would impose.

To the extent the Court concludes that subjective legislative motives *are* relevant, it should not preempt state laws unless the evidence demonstrates that the State lacked any non-safety rationale for its action.

A. *Pacific Gas* Performs, at Most, an Objective Purpose Inquiry

As noted above, *supra* Part I.B, the more recent "purpose" inquiries this Court has undertaken have been limited to the same universe of materials—and the same modes of analysis—that the Court uses in statutory interpretation. *See McCreary Cty.*, 545 U.S. at 861-62 ("The eyes that look to purpose belong to an 'objective observer,' one who takes account of the

traditional external signs that show up in the text, legislative history, and implementation of the statute,' or comparable official act."); *Board of Educ. v. Mergens*, 496 U.S. 226, 249 (1990) (plurality opinion) ("[W]hat is relevant is the legislative *purpose* of the statute, not the possibly religious *motives* of the legislators who enacted the law."). This is what Justice Scalia and others have articulated as an "objective purpose" inquiry. *Edwards*, 482 U.S. at 636 (Scalia, J., dissenting); Fallon, 130 Harv. L. Rev. at 541.

In this approach, as in statutory interpretation, "[t]he best evidence of [congressional] purpose is the statutory text." *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991). As in statutory interpretation, courts may stop at the plain language and effects of the statutory text if the purpose and meaning of the law are clear. *See*, *e.g.*, *United States v. Gonzales*, 520 U.S. 1, 6 (1997) ("Given the straightforward statutory command, there is no reason to resort to legislative history."). The inquiry does not demand discovery or taking evidence. And no litigant can "concede" the purpose of a statute; it is up to courts to discern purpose through their usual interpretive tools. *See Orloff v. Willoughby*, 345 U.S. 83, 87-88 (1953) (concessions on question of law do not bind courts).

If *Pacific Gas* did indeed consider statutory "purpose" as well as effects, that consideration was limited to objective purpose. The Court used the statutory text, the law's effects, and a committee report to determine that California had a valid economic purpose. Conspicuously absent was any deep-dive into the California legislature's subjective motivations. Indeed, the Court affirmatively eschewed the invitation to "become embroiled in attempting to ascertain California's true

motive." *Pacific Gas*, 461 U.S. at 216. Even assuming *Pacific Gas* considered purpose, it did not contemplate the subjective motive inquiry that petitioners demand.

B. Any Purpose or Motive Inquiry Should Be Closely Circumscribed

By carefully parsing this Court's decisions in *Pacific Gas* and *English*, the Commonwealth has shown that neither requires consideration of subjective motivation in this context. To the extent the Court reads those decisions differently, any motive-based inquiry must stop at the discovery of a permissible motive. This is the traditional, limited approach to legislative intent—which has prevailed throughout most of our nation's history—in which courts "typically refuse[] to impute impermissible purposes to a statute unless the available indicia effectively rule[] out any other conceivable explanation." Caleb Nelson, *Judicial Review of Legislative Purpose*, 83 N.Y.U. L. Rev. 1784, 1836 (2008); *see*, *e.g.*, *Shaw*, 509 U.S. at 642 (striking down a peculiarly shaped legislative district that was "so extremely irregular on its face that it rationally c[ould] be viewed only as an effort to segregate the races for purposes of voting"). It is also what the Court did in *Pacific Gas*.

Two principles mark the right path. First, there is no preemption unless nuclear safety is the *sole* motivation behind the state regulation. Second, courts must accept a State's proffered rationale unless it is implausible. In *Pacific Gas*, the Court considered "whether there is *a* nonsafety rationale" for the ban on nuclear construction. 461 U.S. at 213 (emphasis added). The Court "accept[ed] California's avowed economic purpose as the rationale for" its law. *Id.* at 216. And then, crucially, the Court's inquiry stopped.

Against the power company's cries for further investigation of California's legislative history and historical context, the Court explained that the venture would be "pointless" in light of the State's ability to reenact the same law for different reasons. *Id.*

A motive inquiry that follows these principles, though still inadvisable and unnecessary, avoids some of the toughest conceptual, practical, and federalism problems raised by a more searching review of legislators' mental processes. To survive a motion to dismiss under this standard, the complaint here must have alleged that Virginia lacked *any* non-safety rationale for its ban on uranium mining. Petitioners did not (and could not) so allege.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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September 4, 2018